**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**Call for CONTRIBUTIONs**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing legal frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

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| **Name of the country/entity submitting information** | **United Kingdom / The Council for the Defence of British Universities (CDBU)** |

**Questions**

*My answers are excerpted from our Position Paper on Academic Freedom and Model Ordinance, which you can read in full on our website. Lead author: Dr Kelli Rudolph*

*See:* [**https://cdbu.org.uk/cdbu-position-paper-on-academic-freedom-updated**](https://cdbu.org.uk/cdbu-position-paper-on-academic-freedom-updated)

**General framework**

1. How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.

*The UK has no tenure system, which in other national contexts systematically specifies and strengthens the formal and normative protections afforded by academic freedom. Instead, academic freedom appears as a principle of conduct for the Education Commissioners and the Office for Students in England. The relevant pieces of legislation are the Higher Education (Free of Speech) Act of 2023, the 1988 Education Reform Act (ERA) and the Higher Education and Research Act (HERA) 2017 respectively.*

*The Higher Education (Free Speech) Act of 2023 seeks to improve legal protection for academic freedom in England. This act puts more responsibility on universities to promote, not merely ensure, academic freedom and freedom of speech, particularly in relation to teaching and research. The act also requires universities in England to consider whether speech is lawful by taking into account criminal law, including the 1986 Public Order Act and the 2010 Equality Act. Universities are also required to publish a code of practice for freedom of speech on campus. The 2023 Act also establishes a new Director for Freedom of Speech and Academic Freedom to oversee the Office for Students free speech functions, to implement a new regulatory and complaints scheme, and to investigate when universities are accused of breaching their duties under the Act. Since the Higher Education (Free Speech) Act of 2023 is not yet fully in force and has yet to have the details of its enforcement set out, it is all the more important for English universities to articulate robust protections for academic freedom based on international standards, including the European Convention on Human Rights (as interpreted by relevant jurisprudence).*

*The 2017 HERA establishes the Office for Students, one of whose functions is to protect the institutional autonomy of HE providers. In so doing, it must be guided by the Secretary of State's Guidance who in turn must also seek to protect the institutional autonomy of providers. Institutional autonomy is articulated as including: the freedom within the law of academic staff at English higher education providers—(i) to question and test received wisdom, and (ii) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers. The focus on institutional autonomy in the 2017 HERA is now balanced by the 2023 HE(FS)A protection of academic freedom of individual and groups of academics.*

*The 1988 ERA established University Commissioners, whose functions and responsibilities are outlined by the Act. One of those responsibilities is to exercise its functions with due regard to the need to: ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular 8 opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions…. Once established for three years following the 1988 ERA, the duties and powers of the commissioners were confirmed annually thereafter by means of a statutory instrument; the last of which [Education (University Commissioners) Order 1995 (S.I. 1995/604)] was signed in March 1995, by Gillian Shepard, Secretary of State for Education, continuing the commissioners’ responsibilities until 1st April 1996 after which, as no further statutory instruments were signed, the commissioners ceased to operate.*

*The 1950 UNESCO International Conference in Nice, at which the International Association of Universities (IAU) was founded, stipulated three indissociable principles for which every university should stand, namely: 3.1. The right to pursue knowledge for its own sake and to follow wherever the search for truth may lead; 3.2. The tolerance of divergent opinion and freedom from political interference; 3.3. The obligation as social institutions to promote, through teaching and research, the principles of freedom and justice, of human dignity and solidarity, and to develop mutually material and moral aid on an international level.*

*The 1967 Joint Statement on the Rights and Freedoms of Students, set out the essential provisions for student freedom to learn, including freedom of inquiry, expression and association, and the right to proper academic evaluation, disclosure, and representation in University governance.*

*Academic freedom is one of the fundamental principles of the 1988 Bologna Magna Charta Universitatum, of which most UK institutions are signatories. It states that: ‘Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement; ‘To preserve freedom in research and teaching, the instruments appropriate to realize that freedom must be made available to all members of the university community’.*

2. Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.

3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?

*Some recent government interventions have not been helpful to the cause of academic freedom or have challenged it. For example, some politicians have attacked or stigmatized responsible attempts to redress historical exclusions of marginalised perspectives in teaching and research, perhaps because they fail to understand the issues such attempts seek to resolve. Others have attempted to force universities to endorse non-legally binding definitions and have deployed legislative principles to curtail academic freedom.*

*In a plural society, diverse opinions will always be contested, but academic freedom itself is not a fundamentally disputed concept. Although we may debate how academic freedom applies in particular contexts, or how it creates the conditions for civil and fair treatment of differing opinions, such arguments arise precisely because academic freedom has intrinsic value as a public good. Norms and standards of scholarly discourse require civility and mutual toleration, but they do not justify closing down discussion of ideas, however distasteful or offensive members of the public or members of the academic community itself may find them. Some may be offended by the substance of an expressed opinion, but that is necessarily what happens when cherished or strongly held beliefs are questioned. Open dialogue and robust argument about the merits of contested ideas do not, however, allow individuals to say whatever they wish, wherever they wish. Speech that seeks to promote hate or elicit harm to others is subject to criminal law, which is binding on all, including academics and students. Hence, it is not subject to protection under academic freedom. Crucially, creating an atmosphere where every participant in a discussion feels able to express their ideas and experience without fear is a necessary condition of proper academic liberty. While it is not always easy to keep the balance between ensuring this kind of safety and overcompensating to avoid offence, academic institutions are building up experience in dealing with these questions. In so doing, they serve the interests of all their members by creating a neutral space for debate.*

**Autonomy of educational institutions**

4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.

*Academic freedom and shared governance are the twin pillars upon which the autonomy of universities rests. This differs markedly from the autonomy that any CEO of a large organisation might expect. Unlike a business, a university’s structures, processes, and policies are determined by a diverse group of academic and professional staff, students, administrators, and governing boards working together to uphold the values and standards of higher education. While successive reforms to higher education have introduced managerial practices into universities, they remain, at heart, collegial institutions. While institutions may 3 compete for students and research funds, the pursuit of knowledge afforded by academic freedom serves to maintain collegial bonds across institutions nationally and internationally.*

5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.

*Model Ordinance: Statement of Academic Freedoms*

*1. Academic freedom is the commitment to free and open inquiry without fear of reprisal for academics and students. As such, it is a foundational right and value of higher education.*

*2. The University greatly respects human dignity and human rights, and all members of our community share the responsibility for maintaining an environment of mutual respect and civility. Nevertheless, it is not the proper role of the University to attempt to shield individuals from, or to restrict the lawful discussion of ideas and opinions no matter how unwelcome, distasteful, or offensive those ideas and opinions may seem.*

*3. In accordance with international standards, including the European Convention on Human Rights (as interpreted by relevant jurisprudence) all members of staff of the University who engage in teaching and research either by their written contracts or by established and agreed practice and research students (in this Ordinance called “academic members”) shall have the rights listed below, which comprise “academic freedom” for the purposes of this ordinance.*

*3.1. Without fear of censorship, disciplinary action, loss of privileges, the reduced likelihood of securing promotion or redeployment, dismissal, or any professional or personal reprisal or disadvantage by the University, all academic members of the University, have the right, without unlawful interference, to:*

*3.1.1. question and test received wisdom and put forward new ideas and controversial or unpopular opinions;*

*3.1.2. determine and pursue the subjects, methods, purposes, and partners of their research, scholarship, and creative expression, and publish and disseminate the results of that research as they wish and in the form they deem appropriate, recognising national and international professional principles of intellectual rigour, scientific inquiry, and research ethics;*

*3.1.3. conduct teaching and consider matters in the classroom in a manner that they consider appropriate to the standards and norms of the scholarly enterprise. This includes but is not limited to determining programme and module content, teaching methods, assessment and marking; and facilitating class discussion in accordance with good scholarly practice;*

*3.1.4. speak or write internally or externally on matters of public concern and academic interest, as well as on matters related to professional duties, or the functioning of the University, of higher education, or of any other third party, whether in the UK or abroad, which in their reasonable judgement arise in connection with their professional competence or expertise.*

*3.2. In exercising the rights above, all academic members will have the responsibility to*

*3.2.1. acknowledge the rights of others to academic freedom and freedom of expression;*

*3.2.2. perform professional duties and responsibilities in accordance with University’s policies concerning professional behaviour and conduct of duties, professional principles and with due regard for the law, including expectations of fairness, equality and tolerance of differing opinions to the extent that such policies do not conflict with their academic freedom and/or free expression;*

*3.2.3. honour any applicable agreements with research funding and regulatory bodies,*

*3.2.4. when speaking on matters of public interest, speak in their professional individual capacity unless they specify otherwise, and understand that the public may judge their profession and institution by their utterances.*

*4. Breach of responsibilities set out in 3.2 above may lead to disciplinary proceedings, but in all such cases, the University will have particular regard to the importance of academic freedom, acknowledging the right of an individual to academic freedom ordinarily prevails above the rights and interests of the University.*

*5. In accordance with international standards and best practice, all registered students, in the context of their University education shall have the rights listed below, which comprise “academic freedom” for the purposes of this ordinance. All students shall have the:*

*5.1. right, within the law, to examine and discuss all questions of interest to them as they relate to their course of study, and take reasoned exception to or reserve judgement about data or matters of opinion, without fear of unfair evaluation unrelated to their academic performance;*

*5.2. responsibility to learn the content of any course of study for which they are enrolled, and observe policies concerning student conduct, including expectations of tolerance of opinions that differ from their own.*

*6. Additional rights for all academic members and registered students of the University should also be protected, including the:*

*6.1. right of expression, whether exercised within or outside the context of university study.*

*7. The University commits to*

*7.1. take reasonably practicable steps to support academic members in their pursuit of research, teaching, and defence of their principles within the law, regardless of their focus (such support should be free of any political agenda, institutional priority, or pressures exerted implicitly or explicitly, which may come internally from managers or colleagues or from external bodies or organisations);*

*7.2. ensure that its policies and procedures are compatible with relevant national and international standards including the European Convention on Human Rights (as interpreted by relevant jurisprudence);*

*7.3. support academic members if they are faced with any form of abuse arising out of or in connection with their lawful exercise of the right to academic freedom (this support may include, but not be limited to human resources and legal advice, public relations support, counselling services, Campus Security protection, and robust advocacy and defence of academic staff in the wider public sphere);*

*7.4. respect research grant and/or innovation agreements, undertaking no change or amendment to such agreements without the consent of the researchers, in order to protect academic freedom;*

*7.5. ensure that agreements with national or international partners of any kind respect commitments to academic freedom set out in this Ordinance from the outset, especially with respect to curricula, assessment, research, or employment decisions, and report on such agreements in an open and transparent manner annually to the Senate;*

*7.6. protect academic freedom at all stages of national and transnational collaboration of any kind (for example, within activities that involve students, academics, institutions, campuses, branches, joint accreditation or dual recognition of awards, donors, fieldwork, research, student exchanges, teaching activities and/or employment, commercial activities, on- or off-campus activities, or access to the universities communities, facilities or resources) by*

*7.6.1. evaluating the de jure constitutional and legal protection for freedom of expression and academic freedom and the operation of de facto academic 6 freedom, in those nations within which the University of wishes to operate or with whom they wish to collaborate,*

*7.6.2. undertaking meaningful risk assessment and due diligence when such collaborations and/or operations are being considered, and*

*7.6.3. putting into place from the outset measures to protect academic freedom commensurate to any identified risks and adapting such measures as necessary; and*

*7.6.4. reporting on such collaborations in an open and transparent manner annually to the Senate;*

*7.7. establish a standing academic committee on academic freedom and freedom of expression.*

*7.7.1. Membership of the committee will serve for a three-year term with the opportunity to extend for a second three-year term and the membership will include members of Council (3), members of Senate (3), academic experts across a diverse range of disciplines and career stages (6), a member of research support staff (1), and a PGR student representative (1); 7.7.2. The committee will:*

*7.7.2.1. affirm and promote the importance of academic freedom and free expression and establish its significance as a guiding value of university culture.*

*7.7.2.2. hear complaints and/or receive reports, including those raised confidentially by academic members, about threats to or restrictions on academic freedom arising from university-related activity, reporting on these annually or as may be appropriate to the Senate and the Council.*

*7.7.2.3. address concerns where possible or refer them to other entities for assistance,*

*7.7.3. assist and make recommendations to the Vice Chancellor and their designees regarding encroachments on statutory principles of academic freedom and free expression when dealing with particularly sensitive questions or applying the policies, procedures, and codes of practice of the University.*

*7.7.4. Provide recommendations to the Senate and Council in relation to complaints arising from or any issue of breach in relation to this Ordinance, as may be appropriate.*

**Funding**

6. How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?

7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.

**Surveillance**

8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?

**Freedom of expression in teaching and access to books**

9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?

10. Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** [hrc-sr-education@un.org](mailto:hrc-sr-education@un.org), using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.